IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE EIGHTEENTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 19803 of 2001

Between:

B.V.Ramanaiah S/o. Dora Swamy
R/o. D.No.18/2/4B, Ashok Nagar,
Tirupati, Chittoor District.

..... PETITIONER

AND

1. The Appellate AuthorityU/s48(3)of A.P. Shops & Establishment

Act, 1988 Rep by its Deputy Commissioner of Labour (H)
Anjaiah Karimika Bhavan, R.T.C. X Roads,
Hyderabad.
2. The Authority U/s 41 of A.P.Shops & Esst Act, 1988,

Represented by its Assistant Commissioner of Labour-III (H),
Anjaiah Karmika Bhavan, R.T.C. X Roads,
Hyderabad.
3. The A.P. Co-operative Central Agriculture Development Bank

Ltd., Rep by its Managing Director,
Hyderabad(Now Called as A.P.State Co-op Bank Ltd.,

4-1-441,) Troop Bazar, Hyderabad - 500001,
4. The District Cooperative Central Bank Ltd.,

Rep by its General Manager, Chittoor.
5 The Manager District Cooperative Central Bank Ltd.,
Srikalahasthi, Chittoor District.

.....RESPONDENTS

The Court made the following:

ORDER:

Challenging the orders of the first respondent in S.A.No.11 of 2000 dated 08.04.2001 in setting aside the orders of the second respondent in S.E.No.35 of 1999 dated 29.01.2000, the present writ petition has been filed.

The case of the petitioner, in brief, is that he was appointed as Supervisor in the year 1978 and he was entrusted to process the loan application of the applicants and also to ensure the recovery of loan instalments, besides collection of dues. While so, a charge sheet dated 08.01.1981was issued to the petitioner with the following charges:

1. *In the charge, it is alleged that the employee has collected Rs.5,740/- from 7 member loanees, issued provisional receipts and misappropriated the same without remitting the amount in the bank for which he is liable with interest at 12%*

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2. *Under this charge, it is alleged that the employee has collected an amount of Rs.1,676.68/- issued two provisional receipt dated 23.05.1980 for Rs.488.68/- and for Rs.1,193.00/- misappropriated the amount and secured back the two receipts and cancelled them as if to show that the amounts are not collected and thus committed misappropriation of bank funds and tampering of records.*

After giving explanation by the petitioner to the charge sheet, an enquiry was conducted, and after a show cause notice issued to the petitioner on 25.05.1981, he was removed from service by proceedings dated 06.08.1981. Thereafter, the petitioner preferred an appeal before the Appellate Authority, which was rejected by proceedings dated 16.11.1985. Then the petitioner raised a dispute before the second respondent under Section 41 of the A.P. Shops and Establishments Act, 1988, for reinstatement with full back wages. After completion of full trial, the second respondent ordered the reinstatement of the petitioner into service with continuity of service with 40 % back wages. In the second appeal filed by the third respondent, the Appellate Authority-first

respondent set aside the orders of the second respondent. Aggrieved by the same, the present writ petition has been filed by the petitioner.

The learned counsel for the petitioner contends that though the petitioner was exonerated in the enquiry conducted under Section 51 of the A.P. Cooperative Societies Act, he paid the entire alleged misappropriated amount with interest, that the second respondent-Regional Authority, after considering the material available on record, ordered reinstatement with continuity of service and back wages, and that therefore, the orders of the second respondent reinstating the petitioner into service with continuity of service and 40% back wages cannot be interfered with and therefore, the orders of the first respondent is liable to be set aside.

On the other hand, the learned standing counsel for the respondents 4 and 5 contends that the petitioner himself admitted the guilt of the charges in the departmental enquiry and therefore, the second respondent-Regional Authority, without considering the enquiry report simply allowed the appeal. The first respondent after careful scrutiny of the entire material revoked the order of the second respondent, and therefore, the same cannot be interfered with.

The allegation against the petitioner is that he misappropriated an amount ofRs.5,740/- which was collected from the loanees by issuing two provisional receipts dated 23.05.1980. The respondents issued a memo dated 08.01.1981 along with the statement of allegations of misappropriation, which was duly acknowledged by the petitioner on 12.01.1981. No reply was given to those allegations. Therefore, the Disciplinary Authority appointed a regular enquiry officer to conduct an enquiry. During the course of enquiry, no witnesses were examined and no documents were marked on either side. But, the delinquent employee himself admitted that he has collected an amount of Rs.5,740/- from 7 member loanees and misappropriated the said amount without remitting the same into the Bank. Further, he stated that he is ready to deposit the entire amount with interest if he was given 15 days time. Basing on the said admission, the Enquiry Officer came to a conclusion that the petitioner

misappropriated an amount of Rs.5,740/-. No doubt, under Section 51 of the A.P. Cooperative Societies Act, the recommendation given by the Enquiry Officer, the third respondent imposed the punishment of removal. The Regional Authority rejected the enquiry report on the sole ground that no witnesses were examined and that no documents were marked and that there is no evidence before the Enquiry Officer.

There cannot be any dispute when the delinquent himself admitted the guilt of the charges framed against him. When the delinquent employee himself admitted the charges framed, the question of adducing any evidence or producing any material does not arise. Since, the findings of the enquiry officer are based upon the admissions made by the delinquent, no further evidence is required. Though established from the statement of the delinquent employee before the enquiry officer that he misappropriated the funds and tampered with the receipts, the same was considered by the Regional Authority, and therefore, perverse finding of fact has been recorded and the petitioner was exonerated under Section 51 of the A.P. Cooperative Societies Act. Such a finding recorded by the Regional Authority is illegal on the face of the record in view of the fact that the appellant himself admitted the charges framed against him.

The Appellate Authority, in the appeal preferred by the Management found that it is established by the admission of the delinquent employee before the Enquiry Officer that he misappropriated the funds and tampered with the records, and that therefore, the appeal was allowed. Such a finding cannot be said to be perverse or contrary to law in view of the fact that the delinquent himself admitted the charges. The findings given in the enquiry report conducted under Section 51 of the Act, are nothing to do with the departmental proceedings. Since it is a case of misappropriation of funds, taking a lenient view does not arise. The role of the employees who are misappropriated the public funds, they have to be dealt with heavily. In that view of the matter, I see no grounds to interfere with the orders under challenge.

Accordingly, the writ petition is dismissed. No order as to costs.

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(K.C. BHANU, J)

Date: 18.08.2005

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